



RECEIVED

02 AUG 16 PM 3 35

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
312 EIGHTH AVENUE, NORTH
25TH FLOOR, WILLIAM R. SNODGRASS TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-0569
TELEPHONE: 615-741-3072; FAX: 615-741-4000

TN REGULATORY AUTHORITY
DOCKET ROOM

August 16, 2002

Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**RE: Petition to Suspend BellSouth Tariff docket number 0220787 and to Convene
a Contested Case Proceeding.**

Dear Chairman Kyle:

Enclosed please find the original and fourteen (14) copies of a Petition to Suspend Tariff and to Convene a Contested Case filed on behalf of the Emergency Communication Board in the above-entitled action. I have also enclosed a copy of the Emergency Communication Board's August 15, 2002 letter to BellSouth Telecommunications and the Certificate of Service showing service on BellSouth.

If you should have any questions, please do not hesitate to contact me. Thank you for your attentions and courtesies.

Very truly yours,

Alison G. Zane
Staff Attorney
AGZ/a
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: PETITION TO SUSPEND
BELLSOUTH TARIFF NO. 0200787 AND
TO CONVENE A CONTESTED CASE
PROCEEDING

02 AUG 16 PM 3 35

DOCKET NO. 02-00787

TN REGULATORY AUTHORITY
DOCKET ROOM

COMPLAINT AND REQUEST FOR REVIEW

BACKGROUND

The Emergency Communications Board (hereinafter, "ECB") of the State of Tennessee submits the following petition to the Tennessee Regulatory Authority (hereinafter, "TRA") and respectfully complains, requests a suspension of the tariff and requests a review of this case to investigate whether the BellSouth tariff is just and reasonable and consistent with state and federal law, and consistent with the interests of public safety. BellSouth recently filed a tariff before the TRA, Docket Number 0200787, to implement Phase Two of the FCC Order 94-102- Wireless E-911 Service. Phase Two of the FCC ruling is designed to provide a more exact location for wireless 911 calls. There needs to be a fair and just agreement between the utility and all wireless carriers so that the E-911 call data can be delivered to a Public Safety Answering Point (hereinafter "PSAP"). By implementing and requiring this tariff, as a condition to interconnectivity, BellSouth is prohibiting Phase Two agreements with wireless carriers from being established and thus, stopping implementation of E-911 in the State of Tennessee. Even if agreements were established with the tariff in place, the cost of this tariff would be passed on to the State 911 Emergency Communications Fund. This will, in turn, threaten the long-term solvency of the fund and further impair the ECB in fulfilling its mission

and further thwart the intent of Tenn. Code Ann. Title 7, Chapter 86, et seq.

Notwithstanding, the ECB contends that such a tariff as a condition of interconnectivity for delivering E-911 call data is unwarranted and unnecessary. We believe that the utility has previously recovered its interconnectivity cost as a part of Phase One cost recovery and is merely attempting to secure an unreasonable rate of return at the risk of impairing public safety.

JURISDICTION

Tenn. Code Ann. §65-5-201 grants the Commission the power and the authority “after hearing upon notice, by order of writing, to fix just and reasonable individual rates...which shall be imposed, observed and followed thereafter by any public utility.”

Tenn. Code Ann. §65-4-101 defines a “public utility” as a corporation that own[s], operate[s], manage[s] or control[s], within the state, a telephone company. The statutory sections giving the Commission power and authority are further specified and delineated by General Public Utility Rules §1220-4-1-.06 (5), which states that, “The Commission may, on its own motion or on the filing or a sufficient protect by any person or persons affected, or such tariff modified or suspended.”

The Commission has the authority through the above-mentioned statutes and rules, to have personal and subject matter jurisdiction over BellSouth and BellSouth’s proposed rate increase through tariff, docket number 0200787.

ARGUMENT

The ECB submits that BellSouth's proposed tariff would not be just and reasonable and is inconsistent with public safety and welfare for the following reasons:

(1). The tariff has and will continue to bring the implementation of Phase Two of the FCC Order 94-102- Wireless E-911 Service to a complete halt;

(2). The tariff will place an undue financial burden on the State's 911 Emergency Communications Fund, thus threatening the fund's long-term solvency;

(3). With the implementation of this tariff, it is anticipated that wireless carriers will direct cost recovery of this fee to the State;

(4). Ultimately, the State will not be able to absorb this cost and this burdensome tariff will be unfairly passed on to consumers, when consumers are entitled to nondiscriminatory access to 911 services that are just and reasonable pursuant to applicable state and federal laws and rules;

(5). This tariff is wholly unwarranted and unnecessary. ECB is respectfully requesting a hearing to include an inspection of BellSouth's financial transactions for services received in the area of E-911 interconnectivity, which will show that the implementation of such a tariff is unwarranted; hence, it is not just and reasonable;

(6). With the implementation of this tariff, the establishment of Phase Two will come to a grinding halt, which will in turn, threaten the safety of the public. The public will not be able to obtain E-911 service that is run efficiently and in a cost-effectively.

REQUESTED RELIEF

The Petitioner strongly urges this Authority to review and suspend the implementation of the BellSouth tariff since it has such serious implications for the survival of the State 911 Emergency Communications Fund and costs passed on to the consumer. The Petitioner respectfully requests that this Authority suspend the proposed tariff and conduct a review into whether or not such a tariff is just and reasonable or whether it is wholly unwarranted and unnecessary thereby threatening 911 service to the public.

Therefore, pursuant to the rules of the TRA, the Petitioner submits the following:

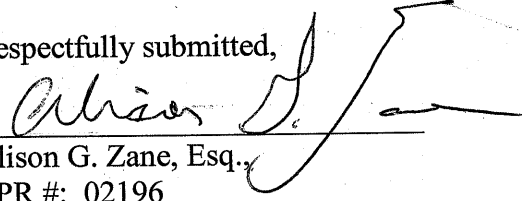
- (1). Petitioner, Emergency Communications Board of the State of Tennessee is located at the Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Towner, 5th Floor, Nashville, Tennessee 37243.
- (2). The Board is responsible for implementing wireless enhanced 911 service in the State of Tennessee in addition to acting on behalf of the State's Emergency Communications Districts in implementing wireless enhanced 911 service and having oversight of the ECS rate increases as well as authority over financially distressed ECDs. Tenn. Code Ann. Section 7, Chapter 86, et seq.
- (3). BellSouth is located at 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-3300.
- (4). BellSouth is authorized to provide, and does provide, local telephone service to the majority of the PSAPs in the State of Tennessee.
- (5). BellSouth's proposed Tariff docket number 0200787 is unjust, unreasonable and discriminatory in violation of state law.

(6). The TRA has jurisdiction over this matter pursuant to Tenn. Code Ann. §§ 65-5-201, 65-5-203(a), 65-5-210(a), 65-4-117(1), 65-5-208(c), 65-4-101 and Rule 1220-4-1-.06(5).

(7). Petitioner requests that the TRA, pursuant to its statutory authority, suspend BellSouth's proposed tariff, review the case and to address the issues raised in this Petition to take whatever additional action is warranted.

(8). Petitioner is requesting that this action be heard at the TRA Monday, August 19, 2002 Meeting during the Miscellaneous and New Matters.

Respectfully submitted,


Alison G. Zane, Esq.

BPR #: 02196

Staff Attorney

Dept. of Commerce and Insurance- Legal

312 8th Avenue, North

Tennessee Tower, 25th Floor

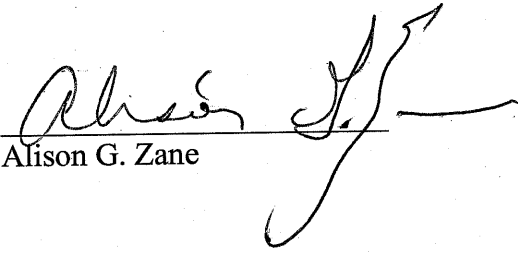
Nashville, Tennessee 37243

(615) 741-3072

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. Mail to the following on this 16th day of August, 2002.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300



Alison G. Zane



STATE OF TENNESSEE
TENNESSEE EMERGENCY COMMUNICATIONS BOARD
DEPARTMENT OF COMMERCE & INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-253-2164

RANDY PORTER
CHAIRMAN

ANTHONY HAYNES
EXECUTIVE DIRECTOR

August 15, 2002

Mr. Charles L. Howorth, Jr.
Regulatory Vice President
BellSouth Telecommunications
Suite 2104
333 Commerce St.
Nashville, TN 37201-3300

Dear Mr. Howorth:

On behalf of the Tennessee Emergency Communications Board (TECB), I am requesting that BellSouth delay implementation of the tariff recently filed before the Tennessee Regulatory Authority (TRA), Docket # 0200787, Tariff to Implement Phase Two of FCC Order 94-102 - Wireless E-911 Service, in order to permit a more complete review by the TRA of the impacts to E-911 implementation in Tennessee. We will also formally request that this matter be reviewed by the TRA. We believe a complete review is needed to evaluate the impact of BellSouth's proposed tariff on the implementation of Phase Two E-911, as well as to the Tennessee '911 Emergency Communications Fund'. We also believe BellSouth's proposed tariff is contrary to the public safety interests of Tennessee, as well as the intent of *Tennessee Code Annotated* Title 7, Chapter 86, et seq.

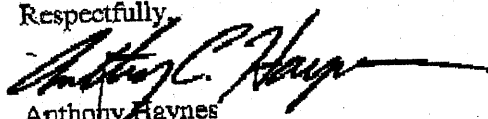
We recognize the date of this request falls on the eve of the closing period for approval of the proposed tariff. The timing of this request is due solely to the fact that the Board was unaware of the proposed tariff being before the TRA. As the State of Tennessee's independent agency charged with oversight of all Emergency Communication Districts and all E-911 policies, requirements and implementation, we respectfully request special consideration of this request.

To date, no national wireless carrier has agreed to enter into the E-911 Phase Two interconnectivity agreement with BellSouth due to the proposed tariff. Such agreement is necessary to enable E-911 Phase Two data to be delivered to a Public Safety Answering Point (PSAP). Given that BellSouth serves as the PSAP Local Exchange Carrier in 64 of 95 counties in Tennessee, using the fee as a condition for wireless carriers to interconnect to E-911 trunks and tandems, has brought implementation of Phase Two E-911 in Tennessee to a halt. Further, if the proposed

tariff is implemented wireless carriers will most likely direct cost recovery of this fee to the state, either in the form of a direct request or embedded in Phase Two Cost Recovery Requests.

Notwithstanding, we believe the proposed tariff is unwarranted and unnecessary. We believe a careful analysis of BellSouth's financial transactions for services required in the area of E-911 interconnectivity will identify that the proposed tariff is unwarranted. Given the significant impacts of the proposed tariff on public safety, specifically in implementing E-911, we believe the TRA should require BellSouth to produce documentation that demonstrates the proposed tariff is warranted, just and reasonable. Further, we believe the TRA should weigh such considerations for this or any similar request for a tariff approval, against the potential effects to the public's interest and safety.

Respectfully,



Anthony Haynes
Executive Director

CC: The Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243